

## Nuclear Regulatory Commission

## § 2.1206

(3) The hearing file also must be made available for public inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room.

(b) The hearing file consists of the application, if any, and any amendment to the application, and, when available, any NRC environmental impact statement or assessment and any NRC report related to the proposed action, as well as any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action. Hearing file documents already available at the NRC Web site and/or the NRC Public Document Room when the hearing request/petition to intervene is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

(c) The NRC staff has a continuing duty to keep the hearing file up to date with respect to the materials set forth in paragraph (b) of this section and to provide those materials as required in paragraphs (a) and (b) of this section.

(d) Except as otherwise permitted by subpart C of this part, a party may not seek discovery from any other party or the NRC or its personnel, whether by document production, deposition, interrogatories or otherwise.

### § 2.1204 Motions and requests.

(a) *General requirements.* In proceedings under this subpart, requirements for motions and requests and responses to them are as specified in § 2.323.

(b) *Requests for cross-examination by the parties.* (1) In any oral hearing under this subpart, a party may file a motion with the presiding officer to permit cross-examination by the parties on particular admitted contentions or issues. The motion must be accompanied by a cross-examination plan containing the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination.

(2) The cross-examination plan may be submitted only to the presiding officer and must be kept by the presiding officer in confidence until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide each cross-examination plan to the Commission's Secretary for inclusion in the official record of the proceeding.

(3) The presiding officer shall allow cross-examination by the parties only if the presiding officer determines that cross-examination by the parties is necessary to ensure the development of an adequate record for decision.

### § 2.1205 Summary disposition.

(a) Unless the presiding officer or the Commission directs otherwise, motions for summary disposition may be submitted to the presiding officer by any party no later than 45 days before the commencement of hearing. The motions must be in writing and must include a written explanation of the basis of the motion. The moving party must attach a short and concise statement of material facts for which the moving party contends that there is no genuine issue to be heard. Motions for summary disposition must be served on the parties and the Secretary at the same time that they are submitted to the presiding officer.

(b) Any other party may serve an answer supporting or opposing the motion within twenty (20) days after service of the motion.

(c) The presiding officer shall issue a determination on each motion for summary disposition no later than fifteen (15) days before the date scheduled for commencement of hearing. In ruling on motions for summary disposition, the presiding officer shall apply the standards for summary disposition set forth in subpart G of this part.

[69 FR 2267, Jan. 14, 2004, as amended at 77 FR 46598, Aug. 3, 2012]

### § 2.1206 Informal hearings.

Hearings under this subpart will be oral hearings as described in § 2.1207, unless, within fifteen (15) days of the

service of the order granting the request for hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written submissions. A motion to hold a hearing consisting of written submissions will not be entertained unless there is unanimous consent of the parties.

**§ 2.1207 Process and schedule for submissions and presentations in an oral hearing.**

(a) Unless otherwise limited by this subpart or by the presiding officer, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the admitted contentions. These materials must be filed on the dates set by the presiding officer.

(2) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants. These materials must be filed within twenty (20) days of the service of the materials submitted under paragraph (a)(1) of this section unless the presiding officer directs otherwise.

(3)(i) Proposed questions for the presiding officer to consider for propounding to the persons sponsoring the testimony. Unless the presiding officer directs otherwise, these questions must be received by the presiding officer no later than twenty (20) days after the service of the materials submitted under paragraph (a)(1) of this section, unless that date is less than five (5) days before the scheduled commencement of the oral hearing, in which case the questions must be received by the presiding officer no later than five (5) days before the scheduled commencement of the hearing. Proposed questions need not be filed with any other party.

(ii) Proposed questions directed to rebuttal testimony for the presiding officer to consider for propounding to persons sponsoring the testimony. Unless the presiding officer directs otherwise, these questions must be received by the presiding officer no later than seven (7) days after the service of the rebuttal testimony submitted under

paragraph (a)(2) of this section, unless that date is less than five (5) days before the scheduled commencement of the oral hearing, in which case the questions must be received by the presiding officer no later than five (5) days before the scheduled commencement of the hearing. Proposed questions directed to rebuttal need not be filed with any other party.

(iii) Questions submitted under paragraphs (a)(3)(i) and (ii) of this section may be propounded at the discretion of the presiding officer. All questions must be kept by the presiding officer in confidence until they are either propounded by the presiding officer, or until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide all proposed questions to the Commission's Secretary for inclusion in the official record of the proceeding.

(b) *Oral hearing procedures.* (1) The oral hearing must be transcribed.

(2) Written testimony will be received into evidence in exhibit form.

(3) Participants may designate and present their own witnesses to the presiding officer.

(4) Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations or his delegate for that purpose.

(5) The presiding officer may accept written testimony from a person unable to appear at the hearing, and may request that person to respond in writing to questions.

(6) Participants and witnesses will be questioned orally or in writing and only by the presiding officer or the presiding officer's designee (e.g., a Special Assistant appointed under § 2.322). The presiding officer will examine the participants and witnesses using questions prepared by the presiding officer or the presiding officer's designee, questions submitted by the participants at the discretion of the presiding officer, or a combination of both. Questions may be addressed to individuals or to panels of participants or witnesses. No party may submit proposed questions to the presiding officer at the hearing, except upon request by, and in the sole discretion of, the presiding officer.